

**MAKING OF THE GROUND NORM THAT IS THE INDIAN CONSTITUTION: A CRITICAL ANALYSIS****SHIVANI JOHRI & VASVI TALWAR**

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**Abstract**

Constitution of India is a living document, it has changed a lot from what was its original manifestation. India, the world's largest democracy, boasts the world's lengthiest constitution, from Shankari Prasad to Keshav Nanda Bharti and Coelho's case has changed the structure and context of India's grandmom that is the Indian Constitution.

An Indian leader of the Communist movement named M.N. Roy originally planted the idea for the creation of a Constituent Assembly in 1934. Following this, the Indian National Congress seized the spotlight in 1935 with its call for the creation of a Constituent Assembly to write the Constitution of India. Even though the British Government agreed to this demand in 1940, the draught proposal that the Government delivered to India with Sir Stafford Cripps was not well received by the Muslim League. Finally, it was the Cabinet Mission that proposed the idea of the Constituent Assembly, commencing the process of drafting the Indian Constitution and making history in the process. with 448 Articles divided into 25 Parts and 12 Schedules, and it breathes the air of sovereignty.

The Assembly spent the years 1946 to 1950 drafting the supreme law of democratic India, which was finally approved on November 26, 1949, taking effect on January 26, 1950, which has since become India's Republic Day. To construct the Indian Constitution, the Constituent Assembly had precisely two years, eleven months, and seventeen days to do so. The Assembly met for eleven sessions for a total of 165 days during this time, 114 of which were devoted to debating the draught constitution.

This article seeks to shed light on all the noteworthy occasions that preceded the formulation of the Indian Constitution, which is regarded as the mother of all Indian laws.

**KEYWORDS**-Grundnorm, Indian Constitution, Republic Day, Keshav Nanda Bharati's case

**INTRODUCTION**

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles and the duties of citizens. It is the longest written Constitution of any sovereign country in the world, containing 448 articles in twenty-five parts, twelve schedules, five appendices and ninety-eight amendments (out of 120 Constitution Amendment Bills). Besides the English version, there is an official Hindi translation. Dr. B.R. Ambedkar is widely regarded as the architect of the Indian Constitution.

The Constitution follows parliamentary system of government, and the executive is directly accountable to the legislature. Article 74 provides that there shall be a Prime Minister of India as the head of government. It also states that there shall be a President of India and a Vice President of India under Articles 52 and 63. Unlike the Prime Minister, the President largely performs ceremonial roles. The Constitution of India is federal in nature. Each state and each Union territory of India has its own government. Analogues to President and Prime Minister, each has a Governor (in case of states) or Lieutenant Governor (in the case of Union territories) and a Chief Minister. The 73rd and 74th Amendment Act also introduced the system of Panchayati Raj in rural areas and Municipality in urban areas. Also, Article 370 of the Constitution gives special status to the State of Jammu and Kashmir. The Constitution was adopted by the India Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. The date of 26 January was chosen to commemorate the Purna Swaraj declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India, and it replaced the Government of India Act 1935 as the country's fundamental governing document. Ensure Constitutional autochthony, the framers of Constitution inserted Article 395 in the Constitution and by this article the Indian Independence Act, 1947 was repealed. The Constitution declares India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty, and endeavours to promote fraternity among them. The words "socialist" and "secular" were added to the definition in 1976 by Constitutional amendment (42nd constitution). India celebrates the adoption of the Constitution on 26 January each year as Republic Day.<sup>1</sup>

During this period, the Assembly held eleven sessions spread over 165 days, among which 114 days were spent solely on consideration of the Draft Constitution

**History**

<sup>1</sup> On the elite consensus perspective, see, for example, Granville Austin, *The Indian Constitution: Cornerstone of a Nation*, 1st edn (New Delhi, 1966);

The Indian Constitution was adopted on November 26, 1949, and the members of Parliament signed it on January 24, 1950. The Constitution was signed by 284 people in total. It rained outside on the day the Constitution was signed, which was viewed as a favourable omen. The Indian Constitution went into effect on January 2, 1950. The Assembly ceased to exist on that date, and the Provisional Parliament of India was formed until a new Parliament was formed in 1952.

The Constituent Assembly (CA) formed a number of committees to study and report on a variety of significant issues that needed to be addressed in the Constitution. The broad ideas outlined in these committees' proposals had been addressed in the CA by August 1947. Sir Bengal Nursing Rau, the Assembly's Constitutional Advisor, prepared a draft incorporating the Assembly's numerous choices based on the committee reports. There were 240 clauses and thirteen schedules in it. Few people must be aware that Sir B N Rau had drafted the initial draft of the Indian Constitution in October 1947. Every clause in the first draft included a marginal note referring to similar provisions in other constitutions or the Government of India (GOI) Act 1935.

Dr. Ambedkar was elected chair of the Drafting Committee (DC) during its first meeting on August 30. Following that, the DC convened for 42 days, beginning on October 27, 1947, to discuss each article of Rau's original draft. On February 21, 1948, the DC submitted a Revised Draft Constitution to the President of the Constituent Assembly. It had 315 items and eight schedules in it. Ambedkar was polite enough to express the DC's gratitude to Sir B N Rau and Shri S N Mukherjee, Joint Secretary and Draftsman respectively, in his covering letter.

The period from February 1948 to November 1949, when the Constitution was finally adopted by the Constituent Assembly, is an important stage of our Constitution's evolution since a number of historic events occurred during that time that influenced discussions on the Constitution's provisions. For example, Indian state integration, the abolition of religious minorities' particular advantages while keeping privileges for backward and downtrodden sections such as Scheduled Castes and Scheduled Tribes, and Centre-State relations. The DC-prepared Draft Constitution was extensively distributed. On April 10 and 11, 1948, a Special Committee was constituted to analyse the text, particularly those elements that differed from previous assembly decisions.

The DC convened again in October 1948 to assess the entire situation considering the Special Committee's report. Following that, Ambedkar, as Chair of the DC, presented a new report to the President of the Assembly, stating the revisions that the Committee had chosen to be introduced in the Assembly.

On November 4, 1948, the Assembly received the Draft Constitution. It was debated for over a year before being adopted and authenticated by the President on November 26, 1949. The Constitution formed the Republic of India on January 26, 1950, and the Constituent Assembly ceased to exist on that date. The Assembly spent over three years crafting the constitution, from December 9, 1946, to November 26, 1949. Sir Rau, Shri S N Mukherjee, and members of different CA and DC committees all contributed to its creation.

### **Composition of the Constituent Assembly**

It was the Cabinet Mission that had put forth the idea of a Constituent Assembly and, therefore the composition of the Assembly was made in line with the Cabinet Mission scheme. This produced certain traits from which it could be inferred that the Constituent Assembly was supposed to be a body partly elected, and partly nominated members. The elections to the Assembly that took place in 1946 resulted in the Indian National Congress winning a total of 208 seats, and the Muslim League securing seventy-three seats leaving behind fifteen seats that were occupied by independents. The decision of the Princely States to not be involved in the Constituent Assembly left ninety-three seats vacated. It is noteworthy that although the Indian people did not directly elect members of the Constituent Assembly, it comprised of representatives of all sections of the society namely the Hindus, Muslims, Sikhs, Parsi, Anglo-Indian, Indian Christians, SCs/ STS, Backward Classes, and women belonging to all these sections.

The working of the Constituent Assembly proceeded based on the Objectives Resolution that was laid before the Assembly on 13th December 1946 by Pandit Jawaharlal Nehru and was adopted by the Constituent Assembly on 22 January 1947. The Objectives Resolution listed eight principles that were the guiding light for the framing of the constitutional structure of India with fundamental elements of independence, and sovereignty. The Resolution stated that the powers of the organs of the government will be derived from the people of the nation thereby ensuring socio-economic and political justice, equality before the law of the land, freedom to express, worship, belief, to the people in return. With the aim to eliminate caste discrimination that had been long prevailing in the Indian society, the Resolution aimed to provide adequate protection to individuals belonging from backward classes, tribal areas, and minority groups. With a vision to maintain worldwide peace and ensure welfare for humankind, the Objective Resolution proposed to keep intact the integrity, and sovereignty of the nation at any cost. A few notable changes were brought in the Constituent Assembly by the Independence Act, 1947 which needs to be mentioned to understand the working of the Assembly, namely-

- The Assembly became a fully functioning sovereign body, and by the means of the Act of 1947, any law made under the umbrella of the British Parliament with regards to India could be scrapped, altered, or modified.
- The Assembly was majorly vested with two functions.
- Make a constitution for the free nation; and
- Enacting laws for the country and its people to be governed by.
- The total strength of the Assembly was fixed at 299 which was inclusive of the strength of the Indian provinces (229), and Regal States (70).

The Assembly functioned in many other ways beyond enacting laws and framing the Indian Constitution such as-

- Adoption of the national flag, national song, and national anthem on 22nd July 1947, and 24th January 1950, respectively.
  - In May 1949, the Assembly had ratified India's membership of the Commonwealth.
  - The Assembly on 24th January 1950, elected Dr. Rajendra Prasad as its first President.
- Finally, it was on 29 August 1947, a Drafting Committee under the chair of Dr. B.R. Ambedkar was formulated by the Constituent Assembly to prepare a Draft Constitution for India. Repeated debates, discussions, arguments, scrapping of clauses, the addition of clauses took place whenever the Committee used to meet, and all were worth it when the Constitution of India was adopted by the country on 26 November 1949 with 284 members signing the same. After that, the Assembly ceased to exist from the 26th day of January 1950 when the Constitution began to be applicable, and a new Parliament was given way in 1952.

### **Committees of the Constituent Assembly**

- Avoid any kind of mismanagement and considering the load of work to be dusted off, the Constituent Assembly had formulated different committees working in specific areas of constitution-making. There were eight major committees namely.
- The Union Powers Committee presided over Pandit Jawaharlal Nehru.
- The Union Constitution Committee presided over Pandit Jawaharlal Nehru.
- The Provincial Constitution Committee presided over Sardar Patel.
- Drafting Committee presided by Dr. B.R. Ambedkar.
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas presided by Sardar Patel. This committee had the following five sub-committees:
  - Fundamental Rights Sub-Committee with J.B. Kriplani as the Chair.
  - Minorities Sub-Committee with H.C. Mukherjee as the Chair.
  - North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee with Gopinath Borolo as the Chair.
  - Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee with A.V. Thakkar as the Chair.
  - North-West Frontier Tribal Areas Sub-Committee.
- Rules of Procedure Committee presided over by Dr. Rajendra Prasad.
- States Committee (Committee for Negotiating with States) presided over Pandit Jawaharlal Nehru.
- The Steering Committee was presided over by Dr. Rajendra Prasad.
- The remaining thirteen committees were considered minor committees.

### **Structure of the constituent Assembly**

The structure of the constituent assembly which will be as follows –

There will be 292 members which will be elected through the provincial legislative assemblies. And there will be The Indian regal states which will be represented by the ninety-three members of the country and the chief commissioners' provinces will be represented by four members. Thus, the total members in the constituent assembly will be 389 but as per the plan of Mountbatten Plan of 3<sup>rd</sup> June 1947, there will be partition in India which leads to the formation of the separate constituent assembly, for the newly made Pakistan and there will be some representatives for the certain provinces where the members of the assembly will result in the reduction of the membership to a total of 299 members.

### **The working of the constituent assembly**

The important day which was considered as 9 the December 1946, which holds the immense importance as it was the day, when the constituent assembly met for the first time, in the constitution hall of the Indian parliament, new Delhi, where eminent personalities such as Pandit Jawaharlal Nehru, Maulana Abdul kalam Azad, Sardar Vallabha Patel, Acharya J.B. Kriplani, Dr Rajendra Prasad, Dr B.R. Ambedkar, Shri Sarat Chandra Bose, on all the auspicious occasion, there will be significantly noticed in the absence of the Muslim League, whereas the oldest member in the constituent assembly was the Dr Sacchidananda Sinha where he was appointed as the temporary chairman in the assembly meeting that was attended by the total of 211 members, and further Dr Rajendra Prasad was elected for the position of the president of the constituent assembly which will be followed by both the H.C. Mukherjee and V.T. Krishnamacharya which was elected for the position of the vice president of the assembly and will be providing with the assembly with the two vice president holding the major positions.<sup>1</sup>

The working of the constituent position will be proceeded based on the objective's resolution, which was laid down before the assembly on 13<sup>th</sup> December 1946, which was laid down by Pandit Jawaharlal Nehru, and which was adopted by the constituent assembly on 22<sup>nd</sup> January 1947. The objectives which are all listed were all the guiding principles and will act like the guiding light for the framing of the constitutional structure of India with all the fundamental elements of Independence consisted, and talks regarding the sovereignty of the constitution, here the resolution will play the major role, which clearly says that the powers of the organs of the government will be derived from the people of all the nations which are concerned and will ensure socio economic and political justice and will contained or talks regarding equality before Law, and there will be proper freedom to express, worship, and belief to the people in return, and there proper purpose was to discriminate caste discrimination in the society, that was prevailing in the Indian society, and all the resolution which was aimed to provide adequate protection to all the individuals, which are belonging to different caste groups, giving protection to people belonging to backward classes, tribal areas and all the minority groups, there purpose was to maintain the world wide peace, and to ensure mankind and there main objective was to ensure welfare for the individuals, and there objective resolution which was proposed to keep intact the

<sup>1</sup> 'Framers of India's Constitution Meet: Proceedings Suffer from Lack of Realism', Times of India, 9 Dec. 1946

integrity and sovereignty of all the nation at any cost, and there were changes which were brought in the constituent assembly by the independence act of 1947, the features should be mentioned to explain the proper framing of the constitution which will be as follows

1. The assembly will become fully functioning for the proper sovereign body, and by the means of the act of 1947, which made the law under the umbrella of the British parliament, with regards to India which will be scrapped, altered, or will be modified.
2. The assembly will have two functions to perform.
3. Firstly, making of the Indian constitution as a free nation.
4. And secondly enacting all the major laws for the country and its people will be governed by the taking consideration of the total strength of all the
5. Indian provinces and real estate attached to it will be considered,
6. And all the assembly will perform all the major functions attached to it,
7. The assembly will perform all the major functions, beyond enacting laws and framing of the Indian constitution which will be as follows.
8. Adoption of the national flag, national song and national anthem on 22<sup>nd</sup> July 1947 and 24<sup>th</sup> January 1950, respectively.
9. In May 1949, the assembly has ratified The Indian membership of the commonwealth. And the assembly on twenty-four the January 1950, where it was declared dry Rajendra prasad as the first president of the country India.
10. Later, on 29 the August 1947, a drafting committee which was set up under the chairmanship of Dr B.R. Ambedkar, which was formulated by the constituent assembly to prepare the draft constitution for the country India, there will be repeated debates, discussion and arguments and scrapping of clauses and addition of clauses took place whenever the committee will meet and the constitution of India, framed and adopted the country on 26<sup>th</sup> November, 1949 with 284 members, signing the same. After that the assembly ceased to exist, from the 26<sup>th</sup> day of January 1950 where the constitution began to apply, and the new parliament was given the way in 1952.

The role of the drafting committee of the constituent Assembly

Among all the committees which are all mentioned above, there was the special mention of the drafting committee, which was headed by Dr Barraged, which was required, and which was set up, on 29<sup>th</sup> August 1947, and the drafting committee.

Which was vested with the main task of drafting the constitution of India, after considering all the proposals from the different committees. And the committee will be comprised of seven members of the assembly which are as follows.

1. Dr BR Ambedkar will be considered as the chair of the committee.
2. Dr KM Munshi
3. N Madhava Rau
4. N Gopalswamy Ayer
5. Alladi Krishnaswamy Ayer
6. TT Krishnamacharya
7. The committee will take a period of beyond six months to prepare its first draft which was all subjected to changes by suggestions, public comments and second draft will be released in October 1948. <sup>1</sup>

#### **Enactment and enforcement of the constitution**

The constitution was adopted on 26<sup>th</sup> November 1949, and will be containing a preamble of 395 Articles and eight schedule after three sets of reading of the draft which was prepared by the drafting committee and will publish in October 1948. And the motion on the draft constitution was declared to be passed on 26<sup>th</sup> November 1949 and there by receiving the signatures of the members along with the president. There are 395 Articles, and some of the articles like Article 5 to 9 , Articles 379, 380, 388, 393, 393 will came into force on 26 the November 1949, and rest of the articles will be enforced on the republic day, and the 26<sup>th</sup> January, 1950 will be considered as the important event as on this day, the constitution of India, will commenced and the India independence act 1947 , and the government of India act, 1935 will cease to exit. At present our constitution was decorated with 448 Articles, 25 Parts and twelve schedules.

#### **The role of women in the constituent Assembly**

There will be a significant feature of the constituent assembly was that the women will play the important role in framing the Indian Constitution, there will be 15 women members in the constituent assembly which will contributed towards the bringing in the constitution of Independent India in their own way, the process of drafting in the constitution, during partition and after the long period of colonization, which was really magnificent and have a dynamic process. And despite being the part of the assembly, there will be voices, and contribution of women, which was neglected and was over shadowed , the founding mothers of the republic which was published by Cambridge university Press, in 2022, which will serve as a means of rectifying the historical omission and was giving due credit to the women who played a crucial role in shaping the India Democracy.

The women in the constituent assembly was that when the constitution was completed , there are 11 women members in the constituent assembly who will draft the constituent assembly and all the constituent assembly will first met on 11 December, 1946, and will have 169 sessions before all its members and they will signed the document on 24<sup>th</sup> January, 1950.

The constituent assembly will have the debate where the constituent assembly debate was the only source where rich and the only source will have 12 volumes of the constituent assembly which will be consisting of speeches which was made by the members and there will be proper amendments to the draft articles, and the constituent assembly debates will have number of reports and notes for various committees however the constituent assembly deposit will not have the reports and the various

<sup>1</sup> Constituent Assembly of India Debates (Proceedings) (hereafter CAD), 9 Dec. 1946,

committees and there will be ground breaking where work was done in the advisory committee which will have two sub committees where the fundamental rights sub committee and the minorities sub committee will be there. Hansa Mehta and Amrit Kaur were on the advisory committee were both the members of the fundamental rights subcommittee and Kaur will also be serving on the minority's subcommittee.

The status of women in representation in politics, the representative's government increased but women count remains low, according to the UN Women, as of September 2022, there will be 30 women which will be serving as the elected head of the state, and of government in 28 countries, where the total of 193 UN Member states will be there.

And on the global level the average of female representation in national parliament was twenty-six. Two percent. and for India, the women representation in the Lok Sabha, in the lower house was remained slightly below 15 percent. In the country India, not only women were given the right to vote from the beginning, but many women were considered as the members of the constituent assembly, and they also made unprecedented contribution in the making of the Indian constitution.<sup>1</sup>

### Adoption from other constitutions

The major architect of the Indian constitution was most heavily influenced by the British model of the parliamentary democracy, in addition, a number of principle, was adopted from the Indian constitution, which includes united states of America, which will be including the various separation of powers, among the various branches of the government, and there will be proper establishment of the supreme court. And there were various principles which will be adopted from the Canada were federal government with the strong centre and also there will be distribution of powers, between various central government and state government, along with the placing of the of residuary powers with the central government, from the Ireland the federal policy of the government which was adopted, and from Germany the principle of suspension of fundamental rights, during emergency was adopted. And from Australia, the idea of having the concurrent list of shared powers was used very well and it was all utilized for the preamble.

### The role of amendment in the constitution

The process of rewriting any part of the constitution was called as amendment, and amendments to the constitution, which was made by the parliament, the procedure for which was laid out in Article 368, and amendment bill which was passed by both the houses of parliament, by two third majority and voting. In addition to this, there were certain amendments which pertain to the federal nature of the constitution which must be ratified by a majority and voting. In addition to this, certain amendments which will pertain to the federal nature of the constitution, and which must be ratified by a majority of state legislatures. There are ordinary bills and there will be no provisions, for joint sitting of the two houses of the parliament to pass a constitutional amendment bill, there will be no provisions, for joint sitting of the two houses of the parliament to pass a constitutional amendment bill, as of September 2013, there will be 120 amendment bills most of the amendments which will be addressed where the issues dealt with the statute in other democracies, the constitution was so specific in spelling out governmental powers.<sup>2</sup>

### Conclusion

The role of women in the 75 years of our constitution, here be. Scholars, teachers, students, lawyers, judges and all other who will engage with our constitution making the efforts will look into the sources, and will tell a more complete story of our drafters, the quiet women and the more visible men will be recalled for all there roles and contributions, and that would be an accurate telling of how our founding document came to be. whereas the constitution of India was the complete blend of all the provisions, and the articles will itself make it the apex law of the state, and the soul of the constituent assembly in implementing and interpreting any article of the constitution must always be considered, and the framers of the constitution will tried to incorporate the provisions in the constitution for the significant provisions in the constitution so that there will no scope for ambiguity for the provisions, which will be pertaining to as how the governance will take place, in the constitution and therefore the features of the Indian constitution which will make a complete and comprehensive document for the country.<sup>3</sup>

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